S/N: 09/834,141

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PATENT
Docket No. RAL920000016US2

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REMARKS

This amendment is filed with a RCE Patent Application. The amendment also addresses issues raised in the final office action mailed on August 18th, 2005.

A. Rejection of Claims 1-3 and 10-12

Claims 1-3 and 10-12 are rejected under 35 CFR 102(b) as being anticipated by Pillar et al (US Patent 6,438,106).

A rejection under 35 USC 102(b) (anticipation) requires that every element, function or feature of the rejected claim be found in a singular reference. MPEP, 706.02, pp. 700-21 (Rev. 1, Feb. 2003). Applicants contend the amended claim 1 set forth elements, which are not disclosed in Pillar et al. In particular, the claim calls for calendar and various algorithms for placing pointers on different calendars. No such calendar and/or algorithms for performing those functions was found in Pillar et al. Therefore, Claims 1-3 are patentable over the art of record.

With respect to Claims 10-12, applicants argue that calendar is recited in the claim and is not found in Pillar et al. Pillar et al teaches Connection Scheduler (CS0-CS). However, there is no teaching or suggestion as to what these CS maybe. The Examiner equating CS to be the same as calendar as set forth in applicants' claims seem to be an error since there is no teaching or suggestion in the Pillar reference that would make one skilled in the art conclude that CS and calendar are identical. Absent such a teaching, it is applicants' contention that CS as used in Pillar et al is too nebulous to warrant a rejection under 35 USC102 (b) (anticipation).

The Examiner in responding to applicants argument in the final office action states, in part, "...since the functions of calendars as claimed and function of the connection queues and the CS-0 and CS-7 of Pillar are the same, the claims are anticipated by Pillar". In response to this argument, applicant respectfully disagrees with the Examiner. Applicants believe this statement is not in sync with current state of

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the law as applies to the rejection under 35 USC 102(b) (anticipation). The current
state of the law for a rejection based upon anticipation is that every element in the claim
must be found in a single reference. The claim recites a calendar, where as Pillar et al
teaches Connection Scheduler (CS). There is no clear teaching of the function that CS
provides and even if it did, CS could be a range of different scheduler excluding a
calendar. Since the claim calls for calendar and the reference failed to give any
teachings or suggestions that would link CS to a calendar, applicants argue that the
teaching in the reference is too nebulous to warrant the rejection under 35 USC 102(b).
Therefore, Claims 1-3 and 10-12 are not anticipated.

B. Rejection of Claims 17 and 19

Claims 17 and 19 are rejected under 35 USC 102(b) as being anticipated by
Hughes et al. (US Patent 5,835,494).

In response, claims 17 and 19 are amended to state a single flow is placed
simultaneously on the first and second calendar. No such teaching is suggested or set
forth and Hughes et al. The Examiner reference to Column 3, Line 1-8 (Hughes)
relates to the treatment of individual virtual connections operating at different transfer
rates and not to placing the flows simultaneously on different calendars as set forth in
the claims. As a consequence, claims 17 and 19 are not anticipated by Hughes et al.

C. Rejection of Claims 4-9 and 13-15

Claims 4-9 and 13-15 are rejected under 35 USC 103 (a) as being unpatentable
over Pillar (US Patent 6,438,106) in view of Duffield et al (US Patent 6,452,933).

The law as applied for rejection under 35 USC 103(a) requires that the Examiner
establish a prima facie case of obviousness. To make out such a case every element
of the claim must be found in the combined references. MPEP 2142. Claims 4-9
depend on claim 1. Therefore, all the limitation of claim 1 is incorporated in the
dependent claims 4-9. As argued above and incorporated herein by reference the
limitation set forth in amended claim 1 is not found in Pillar et al. Therefore, even after

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the Examiner combination the resulting references would not have the limitations set forth in the amended claim 1. As a consequence the combination would not teach all the limitations of the claims. Therefore, the Examiner, even after the combination, fails to make out the prima facie case of obviousness. Therefore, claim 4-9 are not obvious in view of the Examiner's combination.

Likewise, claims 13-15 depend on claim 10. As argued above and incorporated herein by reference claim 10 calls for providing two separate calendars. As argued above and incorporated here by reference the Pillar et al reference does not teaches the use of calendar for scheduling. Instead, it discloses and teaches Connection Scheduler (CS), which are not calendars as recited in the claim. Therefore, after the Examiner's combination the calendar element would not be found in the combined references. As argued above and incorporated herein by reference failure of the references to teach every limitation of the claim indicates failure of the Examiner to make out the prima facie case of obviousness. Therefore, claim 13-15 are not obvious in view of the combined references.

D. Rejection of claims 18 and 20-21.

Claims 18 and 20-21 are rejected under 35 USC103 (a) as being unpatentable over Hughes in view of Calvignac et al (US Patent 5,946,297).

In response applicants respectfully disagree with the Examiner and argue as set forth below a prima facie case of obviousness has not been made as is required for a rejection based upon obviousness. Therefore, the claims are not obvious in view of the cited references.

(i) Improper Combination No Basis or Suggestion in Either Reference

Applicants contend the combination is improper because there is no suggestion or basis in either of the references to form the combination. Hughes et al uses calendar for scheduling. Calvignac et al use a different type of scheduler, Round-Robin, 130, figure 2, (Column 5, Lines 24-31). Calvignac provides minimal bandwidth service and a

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complimentary service term sharing of remaining bandwidth (Column 3, Lines 50-55).
To provide services disclosed in Calvignac under a different type of scheduler such as
the calendar scheduler disclosed in Hughes require skills beyond those of one skilled in
the art. The references both Hughes and Calvignac fail to suggest how these services
could be provided on a calendar type scheduler. Therefore, lack of suggestion or any
teaching in either of the Examiner's references suggests the Examiner is relying upon
the teachings of the applicant disclosure to make the combination. It is settled law that
such reliance is improper. Therefore, the Examiner fails to establish a prima case of
obviousness and the claims are not obvious in view of the teachings in the references.

(ii) References Fail to Teach Limitations of Claim Invention

In order to establish a prima facie case of obviousness every limitation of the
claim invention must be disclosed in the references. Claim 18 depends on claim 17
and claims 20 and 21 depends on claim 19. Claims 17 and 19 are amended to state
that the single flow is placed simultaneously on first and second calendar. As a
consequence of this amendment, the limitation is also included in the dependent claims
18, 20 and 28. None of the Examiner's reference teaches simultaneous placing of a
single flow on different calendars as recited in these claims. As a consequence, even
after the Examiner's combination, this limitation would not have been present in the
combined references. As a consequence, these claims are not obvious in view of the
references.

In addition, claims 17 and 21 calls for peak and maximum burst size services,
which are not disclosed or suggested in any of the Examiner's reference. The
Calvignac reference only teaches minimum bandwidth and the complimentary
bandwidth term sharing of remaining bandwidth (Column 3, Lines 50-55).

(iii) Reference Teaches Away from Claim Invention

It is applicants' contention Hughes et al teaches away from the claim invention.
The claim invention requires a single flow to be placed simultaneously on different

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calendars. In contrast, Hughes et al teaches different flows are placed on different calendars (See Hughes, Column 3, Lines 1-8). Applicants contend teaching of virtual connection and different calendar for different flows as disclosed in Hughes would lead an artician to place different flows on different calendar rather than a single flow on different calendar as it is recited in the claim. This "teach away" is evidence of non-obviousness. As a consequence, claims 18, 20, and 21 are not obvious in view of the teachings of the references.

E. Rejection of Claim 24 and 25

Claims 24 and 25 are rejected under 35 USC103 (a) as being unpatentable over Pillar (US Patent 6, 438,106) in view of Braff et al (US Patent 5,166,930).

Claim 24 depends on Claim 1 or 17 and Claim 25 depends on Claim 24. Claim 1 calls for algorithm which places pointer on calendar. Claim 17 calls for a single flow simultaneously placed on separate calendars. These features are incorporated in Claims 24 and 25 by reason of dependency. As argued above and incorporated herein by reference in rejection under 35 USC103 (obviousness) requires the Examiner to establish a prima facie case of obviousness. To do so every limitation of the claim invention must be found in the combination. As argued above and incorporated herein by reference, the limitations (recited in this paragraph) in amended Claims 1 and 17 are not in the combination formed by the Examiner. As a consequence, Claims 24 and 25 are not obvious in view of the teaching of the references.

In addition, applicants would like to point out the epoch disclosed in Braff et al is not used for scheduling but, as queue for storing data from connection (See Column 1, Lines 43-53). As the Examiner states, on page 10 of the Office Action, replacing connection queues of Pillar with epoch queues of Braff to meet the teachings of Claims 24 and 25 would have been obvious. Applicants respectfully disagree and argue the resulting reference would provide a plurality of epoch queues with Connections Scheduler (CS). It is argued that the Connection Schedulers (CS) is not calendars with multiple epochs as required by the claim. Therefore, after the Examiner's combination,

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the resulting reference still would not disclose the limitations (calendar with multiple epochs) of applicants' claim; because the combined reference teaches the plurality of epoch queues and the Connection Scheduler identity of which is unknown. As a consequence, the references do not render the claim obvious.

Newly added Claims 26, 27 and 28 are patentable over the art of record for reasons set forth above.

It is believed the present amendment answers all issues raised by the Examiner. Reconsideration is hereby requested at an early allowance of all the claims is solicited.

Date: __January 18, 2006____   Respectfully submitted,

                                                By _____
                                                Joscelyn G. Cockburn
                                                Attorney of Record
                                                Reg. No. 27069

Customer Number 25299
IBM Corporation
Intellectual Property Law -YXSA/B002
PO Box 12195
Research Triangle Park, NC 27709

Telephone: 919-543-9036
Fax: 919-254-2649

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